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7

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 JORGE ALEJANDRO ROJAS,

11 Plaintiff,

12 vs.

13 OWNER OF TELEPHONE NUMBER
14 310-955-5813,

15 Defendant.

Case No.: 2:22-cv-04100-FLA-PVC

Judge Fernando L. Aenlle-Rocha
Magistrate Judge Pedro V. Castillo

DISCOVERY MATTER

**EX PARTE APPLICATION FOR
SUBPOENA DUCES TECUM TO
DETERMINE IDENTITY OF
DEFENDANT**

17 Plaintiff, Jorge Alejandro Rojas (“Plaintiff”), respectfully applies to this Court
18 *ex parte* to grant him permission to have the Clerk of the Court issue a Fed. R. Civ.
19 P. 45 subpoena duces tecum directed at GoTo Communications, Inc to determine
20

1 the identity of the true Defendant(s) in this matter. The subpoena requested is
2 narrow, limited, and restricted. In support thereof, Plaintiff states as follows:

3 **L.R. 7-19 Statement.** Pursuant to L.R. 7-19, Plaintiff is unaware of counsel for
4 any opposing party because the Defendant is a fictitious placeholder entity. The
5 reason for seeking the order is that Plaintiff must identify the proper identity of
6 Defendant via a subpoena. Plaintiff was therefore unable to confer with any
7 Defendant prior to the filing of this application.

8 Plaintiff commenced this action on June 15, 2022, alleging Defendant Owner
9 of Telephone Number 310-955-5813, violated the Telephone Consumer Protection
10 Act (“TCPA”), 47 U.S.C. § 227, by calling Plaintiff at least once for the purposes
11 of solicitation using an automatic telephone dialing system. Dkt. 1. The Defendant
12 in this case has been able to be secret and conceal its identity. However, that does
13 not give it the right to violate federal law without penalty. The requested subpoena
14 is sought to identify the true owners and entities behind a callback telephone
15 number provided to Plaintiff over the phone during the telephone call.

16 As alleged, on June 13, 2022, Plaintiff received a telephone call from Defendant,
17 using a spoofed number, which utilized an automatic telephone dialing system
18 (“ATDS”). Dkt. 1 ¶ 25. However, during the telephone call, the caller identified
19 himself as working for “SC Home Group,” (Dkt. 1 ¶ 26) and provided a callback
20 number of 310-955-5813 (Dkt. 1 ¶ 29), which is different than the spoofed number

1 called from. Plaintiff called 310-955-5813 on June 14, 2022, and an immediate
2 answering system played the message “you have reached the home group, please
3 leave a message and we will get back to you shortly.” Dkt. 1 ¶ 30. Plaintiff believes
4 that the identity of the telephone number 310-955-5813’s owner, is the identity of
5 the entity behind the telephone call alleged in the Complaint.

6 On July 12, 2022, Plaintiff moved *ex parte* for a subpoena directed at Bandwidth
7 CLEC LLC for records concerning the telephone number. Dkt. 11. The Court
8 granted the application on July 19, 2022. Dkt. 12. On August 15, 2022, Bandwidth
9 Inc, a subsidiary of Bandwidth CLEC LLC, produced records identifying the
10 wholesale customer of the telephone number as GoTo Communications, Inc. This
11 entity is *not* the telemarketer, but instead the next entity in the chain of the
12 telephone number. GoTo Communications, Inc will either have the records
13 identifying the end user of the telephone number at issue, or the identity of the next
14 wholesale customer.

15 Plaintiff requests the Court grant the issuance of the following subpoena:

- 16 • Identifying information including account owner name, mailing address, e-
17 mail(s), IP addresses used to access or create account, telephone number,
18 billing address, company name, for the telephone number 310-955-5813,
19 as of June 13, 2022.

1 The requested information will not prejudice any party. Plaintiff is currently
2 prejudiced not being able to bring his claims against the true indispensable entity
3 in this case because of Defendant's actions. The owner of the telephone number
4 will have an opportunity to oppose the requested subpoena, to the extent it is
5 granted, by seeking to quash the same, as the subpoena'd entities should provide
6 their customers notice. The owner, to the extent they are not the telemarketer, will
7 have an opportunity to oppose the lawsuit following amendment of the complaint.
8 Whoever is behind "SC Home Group" is operating behind that ambiguous name in
9 order to avoid identification and liability under the TCPA.

10 Fed. R. Civ. P. 26 gives the Court wide discretion to manage the discovery
11 process. While expedited and early discovery is not the norm, situations like this
12 support it. Defendant is currently allegedly making telemarketing calls without the
13 required consent being received from the caller. In situations where discovery is
14 requested early, Courts consider the entirety of the record to date, and the
15 reasonableness of the request. The record to date establishes a prima facie case of
16 violations of the TCPA. Plaintiff alleges Defendant has called Plaintiff at least once
17 utilizing an ATDS despite not having the required consent to do so.

18 On a showing of "good cause," a Court may allow early discovery. *Semitool,*
19 *Inc v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002). Good
20 cause may exist where "the need for expedited discovery, in consideration of the

1 administration of justice, outweighs the prejudice to the responding party.” *Id.* In
2 evaluating a claim of good cause, courts in the Ninth Circuit regularly consider “(1)
3 the concreteness of plaintiff’s showing of a prima facie claim of actionable harm;
4 (2) the specificity of the discovery requests; (3) the absence of alternative means to
5 obtain the subpoenaed information; (4) the need for subpoenaed information to
6 advance the claim; and (5) defendant’s expectation of privacy.” *Strike 3 Holdings,*
7 *LLC, v. Doe*, 2022 WL 657932 at *1 (E.D. Cal. 2022) (citing *Arista Records LLC*
8 *v. Doe 3*, 604 F.3d 110, 119 (2d Cir. 2010)).

9 As the Court noted in its prior order, “Plaintiff has established good cause
10 for expedited discovery.” Dkt. 12 at 2. Plaintiff satisfies factor 1 because he states
11 a claim under the TCPA. Plaintiff satisfies factors 2 and 4 because the subpoena is
12 limited in nature to allow identification of the Defendant, amend the complaint, and
13 effect service of process. Plaintiff is unable to identify any alternative way of
14 obtaining contact information for the party operating the telephone number (factor
15 3). Plaintiff attempted to get the information needed from the caller but the caller
16 refused to provide it, likely because they are aware their actions violate the TCPA.
17 Finally, there should be no significant privacy interest in the commercial
18 transaction between an individual or entity operating a telemarketing scheme and
19 the telephone provider (factor 5).

1 The requested information is sought ex parte because pursuant to the
2 discovery rules, Plaintiff has not been able to hold a Rule 26 conference as the
3 Defendant has yet to be identified. Plaintiff is unaware of any counsel for
4 Defendant and has been unable to confer with them.

5 Plaintiff requests the Court grant this request. Plaintiff will then request the
6 Clerk issue the requested subpoena. Following being provided the requested
7 information, Plaintiff will amend the Complaint to reflect the correct indispensable
8 party and begin service of process. A proposed order is included with this filing.

9 Respectfully submitted,

10 Dated: August 15, 2022

/s/ Jorge Alejandro Rojas
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14 **CERTIFICATE OF SERVICE**

15 As this is an ex parte application for which no Defendant has been identified
16 yet, no copy of this filing was provided to any Defendant.
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